FILED

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OFFICE OF THE CLERK

No._____

IN THE

Supreme Court of the United States

October Term, 1998

Michael Babcock
Petitioner

v.

City of Manchester
(A Municipal Corporation)
Respondent

On Petition For Writ Of Certiorari
To The Missouri Supreme Court

PETITION FOR WRIT OF CERTIORARI

Michael Babcock, in pro per
483 S. Kirkwood Rd., Apt. 163
Kirkwood, Missouri 63122
314/343-1849

15pp

QUESTION PRESENTED

This petition presents a question of first impression within the scope of the due process clause of the United States Constitution which has an impact upon every appeal filed within the State of Missouri.

State court promulgated procedural rules authorize appellate review which in so doing violates fundamental rights of due process guaranteed by the 14th Amendment to the United States Constitution.

LIST OF PARTIES

The parties to this proceeding are:

Michael Babcock, Petitioner, and

City of Manchester, a municipal corporation, Respondent.

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Appendix B City of Manchester v. Michael Babcock
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Appendix C City of Manchester v. Michael Babcock
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No. 98CR1211
Judgment

Appendix D City of Manchester v. Michael Babcock
Missouri Supreme Court No. 81381
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OPINIONS BELOW

The opinion of the Missouri Court of Appeals is attached as Appendix A and is unpublished.

JURISDICTION

A petition for writ of certiorari to the Supreme Court of the State of Missouri was denied 23 February 1999. A copy of this decision appears at Appendix D.

This Court has jurisdiction pursuant to 28 USC § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix E.

Missouri Supreme Court Rules73.01 and 84.13 are set forth in appendices F and G.

STATEMENT OF THE CASE

Petitioner was convicted in a municipal police court upon a traffic ticket issued by a municipal police officer alleging speeding on January 20, 1998.

A timely application for trial de novo moved the proceeding to the circuit court of St. Louis County.

Motions in abatement were overruled and after de novo proceedings a second conviction was entered.

On April 28, 1998 Petitioner filed a timely Notice of Appeal to the Missouri Court of Appeals, Eastern District. On November 17, 1998 the Missouri Court of Appeals affirmed the circuit court decision.

Petitioner then filed a timely motion for rehearing and / or transfer to the Missouri Supreme Court, which was denied on January 19, 1999

Petitioner filed for writ of certiorari with the Supreme Court of Missouri on February 3, 1999 and was denied on February 23, 1999.

Petitioner presented the question on review before this Court to the Missouri Court of Appeals in his Motion for Rehearing and / or Transfer, then to the Supreme Court of Missouri in the petition for writ of certiorari.

REASONS FOR GRANTING THE PETITION

State court promulgated procedural rules authorize appellate review which in so doing violates fundamental right of due process guaranteed by the 14th Amendment to the United States Constitution.

Missouri Supreme Court Rules 73.01 and 84.13 authorize standards for appellate review in the Missouri Court of Appeals. In so doing, the Missouri Supreme Court has violated the due process clause of the United States Constitution.

Existing rules of appellate review are constitutionally defective in that the present procedure is misleading or vague, because it does not specify plain error review prior to an application of substantive evidence review.

Under the existing rules of appellate review, as created and promulgated by the Missouri Supreme Court, the review standards to be applied are selected firstly or primarily upon the basis of whether the proceedings in the trial court were conducted with or without a trial jury. This fact gives rise to what might be described as errors committed in the appellate court. Where an appellate court is constrained by rules of appellate review which are in and of themselves defective, the appellate court might be said to have no choice but to continue to commit errors during the course of appellate review which impact and are detrimental to constitutionally secured fundamental rights of due process.

CONCLUSION

Therefore, for the reasons set forth the Petitioner respectfully prays that a writ of certiorari should issue.

Respectfully submitted,

Dated this 12th May 1999

Michael Babcock, in pro per
483 S. Kirkwood Rd., Apt. 163
Kirkwood, Missouri 63122
314/343-1849

PROOF OF SERVICE

I, Michael Babcock, pursuant to Supreme Court Rules 29.3 and 29.4, and to 28 U.S.C. §1746, declare that I have served my Petition for a Writ of Certiorari on each party to the above proceeding, or that party's counsel, and on every person required to be served by depositing an envelope containing the above documents in the United States mails properly address to each of them and with first-class postage prepaid, as follows:

Mark Levitt
225 S. Meramec #532T
St. Louis, Missouri 63105
314/725-7878

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of May 1999

Michael Babcock, in pro per

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION ONE

CITY OF MANCHESTER,	)	No. 74287
(a municipal corporation)	)	
	)	Appeal from the Circuit
	)	Court of St. Louis County
	)	
Respondent,	)	
	)	Honorable Carroll M. Blackwell
vs.	)	
	)	
	)	
MICHAEL BABCOCK,	)	OPINION FILED:
	)	November 17, 1998
Appellant.	)	

ORDER

Before James A. Pudlowski, P.J., William H. Crandall, Jr., and Clifford H. Ahrens, JJ. PER CURIUM.

Appellant, Michael Babcock, appeals from the judgment, after trial de novo, finding him guilty of speeding. No jurisprudential purpose would be served by a written opinion.[1]

The judgment is affirmed. Rule 30.25(b).

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[1] Respondent's motion to dismiss appellant's appeal is denied.

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

TO: Attorneys of Record

FROM: Lynn Cooper Hearnes, Clerk

DATE: January 19, 1999

RE: Motions For Rehearing And/Or Transfer To Supreme Court Denied

1. ED72263 K. KHAN, INC. & SH APEL V WORTHAM, ERIC & WO RES
2. ED72976 INVESTORS TITLE CO RES V CHICAGO TITLE INSU APEL
3. ED73296 HALL, BETTY E. ET APEL V JANES, ELDON ET AL RES
4. ED73321 STATE OF MISSOURI RES V ARMSTRONG, RONALD APEL
5. ED73522 PEEK, TERRY LYNN RES V PEEK, MICHAEL ANDR APEL
6. ED73530 HAIR, BARRIE PERRY RES V VOSKUIL, REICK APEL
7. ED73542 ROOF, THOMAS BRADL APEL V DIRECTOR OF REVENU RES
8. ED73605 HOENIG, CHARLES E. APEL V CORRIGAN BROTHERS RES
9. ED73639 COONROD, TIM RES V ARCHER DANIELS MID APEL
10. ED 73773 UNION SEVENTY PART APEL V MARK TWAIN BANK RES
11. ED 73902 JONES, BRENDA APEL V TRITTLER, REGAN M. RES
12 ED74022 UNITED COMPANIES L APEL V TRIUMPH PROPERTIES RES
13. ED74287 CITY OF MANCHESTER RES V MICHAEL BABCOCK APEL

Appendix B

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

CITY OF MANCHESTER, (a municipal corporation)	)	April 21, 1998
	)	Cause No. 98CR001211
Plaintiff,	)	
	)	Division 45
vs.	)	
MICHAEL BABCOCK,	)	
Defendant.	)	

The court takes up for ruling this cause on which evidence was heard on April 20, 1998.

All pending motions were heard prior to introduction of evidence or during the course of the trial. The court finds the defendant "guilty" as charged and orders him punished by a fine of $50.00 and all court costs are taxed against him.

//s Carroll Blackwell
April 21, 1998

Appendix C

In the Supreme Court of Missouri

No. 81381
E.D. No. 74287

January Session, 1999

City of Manchester (a municipal corporation), Respondent,

vs. (TRANSFER)

Michael Babcock, Appellant.

Now at this day, on consideration of appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals,Eastern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgement of said Supreme Court, entered of record at the January Session, 1999, and on the 23rd day of February, 1999, in the above-entitled cause.

Given under my hand and seal of
said court, at the City of Jefferson,
this 23rd day of February, 1999,

//s Thomas F. Simon Clerk

_____ D.C.

Appendix D

AMENDMENT XIV
(Proposed by Congress June 13, 1866. Ratified July 9, 1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

MISSOURI SUPREME COURT RULES

RULE 73.01 TRIAL WITHOUT JURY OR WITH AN ADVISORY JURY—PROCEDURE

(a) In cases tried without a jury or with an advisory jury:

(1) The court shall rule upon all objections to evidence as in jury cases. Where the evidence is ruled inadmissable the court upon request shall take and record the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the evidence is privileged.

(2) The court shall render such judgment that it thinks proper under the law and the evidence. If any party so requests before final submission of the case, the court shall dictate to the court reporter, or prepare and file, a brief opinion containing a statement of the grounds for its decision and the method of determining any damages awarded; and may, or if requested by counsel shall, include its findings on such controverted fact issues as have been specified by counsel. All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached.

(3) Not later than 15 days after the entry of judgment, a party may, but need not, file a motion for new trial or a motion to amend the judgment and opinion, or both.

(b) For appellate review of cases tried without a jury, neither a motion for new trial nor a motion to amend the judgment is necessary to preserve any matter for appellate review.

(c) On appellate review:

(1) The court shall review the case upon both the law and the evidence as in suits of an equitable nature.

(2) Due regard shall be given to the opportunity of the trial court to have judged the credibility of witnesses.

(3) The court shall consider admissible evidence which was rejected by the trial court and preserved. The court may order that proffered evidence which was rejected by the trial court and not preserved be taken by deposition or by reference to a master under Rule 68.03 and returned to the appellate court.

MISSOURI SUPREME COURT RULES

RULE 84.13 ALLEGATIONS OF ERROR CONSIDERED—REVERSIBLE ERROR

(a) Preservation of Error in Civil Cases. Apart from questions of jurisdiction of the trial court over subject matter and questions as to the sufficiency of pleadings to state a claim upon which relief can be granted or a legal defense to a claim, allegations of error not briefed or not properly briefed shall not be considered in any civil appeal and allegations of error not presented to or expressly decided by trial court shall not be considered in any civil appeal from a jury tried case.

(b) Materiality of Error. No appellate court shall reverse any judgment unless it finds that error was committed by the trial court against the appellant materially affecting the merits of the action.

(c) Plain Error May Be Considered. Plain errors affecting substantial rights may be considered on appeal, in the discretion of the court, though not raised or preserved, when the court finds that manifest injustice or miscarriage of justice has resulted therefrom.